...me Court, U.S.
FILED

No. 06-997 JAN 16 2007

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Michael O. Rhines, Petitioner

v.

Norlarco Credit Union, Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE INDIANA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Michael O. Rhines
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Rochester, IN 46975
928-273-0885

QUESTIONS PRESENTED

1. Whether the federal statute, 15 USC 1692g(b), is a Constitutional right protected by the Due Process Clause of the Federal Constitution and made applicable to the states by the 14 amendment to the Federal Constitution?

2. And, if 15 USC 1692g(b) rises to the level of a protected interest, did the deprivation of that right by established state procedure result in a violation of the petitioner's fifth amendment rights made applicable to the states by the 14th amendment, and thus deprive the state court of its subject matter jurisdiction?

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_____

Michael O. Rhines, the petitioner herein, respectfully prays for a writ of certiorari to review the judgment of the Indiana Supreme Court, entered in the above captioned case on October 26, 2006.

OPINIONS BELOW

The opinion of the Indiana Supreme Court (App. A 1a-2a) is unreported. The opinion of the Indiana Appeals Court (App. B 3a-10a) is unreported.

JURISDICTION

The Indiana Supreme Court entered its judgment on October 26, 2006.

This petition is timely filed on or before January 23, 2007.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

The decision of the Indiana Supreme Court is a final judgment. It is a final judgment from the highest Indiana court that a decision can be had.

To clarify whether the state court judgment rests on an independent state ground adequate to support it, the petitioner has sought discretionary review of the federal questions in three separate motions for amplification by either supplemental opinion, amendment, or certificate. App. H (p. 20a - 23a).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

15 U.S.C. § 1692g(b) provides that if the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

15 U.S.C. § 1692k(a) provides that except as otherwise provided by this section, any debt collector who

fails to comply with any provision of this subchapter with respect to any person is liable to such person in an amount to the sum of———

Article III (1) The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws for the United States.....

Article III (2) .....In all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

Article VI provides that this "This Constitution and the laws for the United States.....shall be the supreme law of the land; and the judges in every state shall be bound thereby..."

The Fifth amendment to the U.S. Constitution provides that "no person shall be.....deprived of life, liberty, or property, without due process of law.."

The Fourteenth amendment to the U.S. Constitution provides that "nor shall any state deprive any person of life, liberty, or property, without due process of law..."

STATEMENT OF THE CASE

This is the continuation of a live controversy about conduct by the respondent, Norlarco Credit ("Norlarco") and its attorney debt collector, Timothy O'Connor. Both acted in concert with the state of Indiana, using established state procedure, that deprived Michael O. Rhines of both recognition of his federal rights, actual assertion of those rights, and the mandatory due process secured by the U.S. Constitution and laws for the United States.

The beginning

In July 2000, Michael and Pamela Rhines purchased

a truck from a Chevrolet dealership in Denver, Colorado. The Rhineses executed a Credit Sale Contract and Security Agreement ("the Note"), which was thereafter assigned to Norlarco. The Note provided that the principal amount financed was $10,679.75 and that the interest rate was 17.9%. The Note also provided that the Rhineses were required to make monthly payments in the amount of $272.60 for a period of sixty months. The Note included a security agreement, which made the vehicle collateral for the loan.

Alternate financing

The Rhineses eventually moved to Indiana and divorced. As part of the divorce, Rhines was awarded the vehicle, and he was ordered to make the monthly payments on it. Rhines made his last payment on August 5, 2003.

As a self-employed drywaller it was imperative that he have a truck. Rhines immediately sought financing from private individuals. After inquiries for several months, Rhines found an individual who would provide him the money to pay off the truck on condition Rhines obtain verification of the debt.

Request for verification

On February 26, 2004, Rhines requested verification by certified mail from Norlarco's servicing agent, Centrix Finance. Rhines received no communication or verification from Centrix Finance or Norlarco pursuant to this request.

Lawsuit commenced

On April 8, 2004, Norlarco, by its attorney debt collector, O'Connor, brought a lawsuit against Rhines.

Thus the initial communication with Rhines was the summons and complaint along with the debt collector validation letter (App. 13a). The validation letter informed Rhines that if he informed the debt collector that he disputed the debt within thirty days of April 8, 2004 that the debt collector would provide verification of the debt.

The validation letter made no mention of the thirty day cessation period described in 15 U.S.C. § 1692g(b).

Federal right claim made

On April 30, 2004, within the thirty day time limit required by 15 U.S.C. § 1692g(b), Rhines filed (1) Motion To Dismiss for Failure to Exhaust Administrative Remedies, (2) Notice of Failing to Give Verification of Debt Before Commencing Action Against Plaintiff, (3) Notice of Default on Adequate Assurance of Performance and Verification of Debt.

In the Notice of Failing to Give Verification of Alleged Debt Before Commencing Action Against Plaintiff, Rhines again gave notice of disputing the debt and request for verification.

Norlarco's response

On June 21, 2004, Norlarco, by its debt collector attorney O'Connor responded to Rhines' motion to dismiss. In paragraph 5 of that motion Norlarco states:

> "Plaintiff seeks enforcement of a private right to repayment and replevin of collateral. There is no governmental agency involved, and there is no provision at law for an administrative remedy." In paragraph 6 of that motion Norlarco states, "Because

> there is no administrative remedy available to the Plaintiff, its failure to invoke that non-existent remedy does no deprive the Court of subject matter jurisdiction."

On June 25, 2004, the Fulton Superior Court gave an order denying Rhines Motion to Dismiss, stating in paragraph 2 of that order,

> "This is a civil action brought to enforce a promissory note and security agreement. No government agency is involved. There is no administrative remedy available to the Plaintiff (Norlarco Credit) in this case, thus Plaintiff did not fail to exhaust any such remedies."

Request for hearing denied

On July 26, 2004, Rhines filed a Motion To Correct Errors and Notice of Deprivation of Constitutional rights. In both motions Rhines gave notice to the trial court of deprivation of a protected interest and requested a hearing to vindicate those rights.

On August 27th 2004, the trial court denied Rhines' Motion to Correct Errors and refused to ordered any pre-deprivation hearing as Rhines requested.

On September 24th, 2004, Rhines filed a Notice of Default on Request For Hearing.

Rhines first appeal

On September 23, 2004, Rhines appealed the order of the Fulton Trial Court denying his Motion To Dismiss and deprivation of a protected right without a pre-

deprivation hearing.

The Indiana Appeals Court denied Rhines' appeal on February 9, 2005.

On March 7, 2005 Rhines petitioned the Indiana Supreme Court for rehearing. This petition was denied. The basis for denial was that Rhines' Motion to Dismiss was not an appealable final order and so the Court was without jurisdiction to entertain the appeal. Both the Indiana Appeals Court and the Indiana Supreme Court bypassed the Federal Question of whether failure to provide due process for a protected right denied the Fulton Superior Court its subject matter jurisdiction.

Summary judgment against Rhines

On February 17, 2005, Norlarco filed a Motion for Summary Judgment against Rhines.

Rhines Objects and again raises federal claims

On March 23, 2005, Rhines filed a Verified Motion In Objection. In this motion Rhines directed the trial court to its lack of subject matter jurisdiction for failure Norlarco to provide verification of debt and cessation. In addition the trial court did not provide a pre-deprivation hearing for Rhines' intangible protected interest.

Norlarco granted summary judgment

On April 14, 2005, judgment against Rhines as to all claims and counterclaims, order of replevin, and writ of assistance, was entered on the Fulton Trial Court Record.

Rhines objects and continues federal claims

On May 12, 2005, Rhines filed his Motion to Correct Errors. App. L (p. 30a-38a) In this motion he again pointed out to the trial court that his protected interest in cessation and verification had never been provided. Further, Rhines still did not have a pre-deprivation hearing. And, this conduct deprived the court of its subject matter jurisdiction.

Rhines appeals and presses federal questions

Rhines' Motion to Correct Errors was denied on May 17, 2005. App. D (p. 12a)

On September 29, 2005, Rhines appealed the Fulton Superior Trial Court's order granting summary judgment for Norlarco.

Rhines appeal denied; federal claims avoided

His appeal was denied on May 15, 2006. The opinion is contained in App. B (pages 3a - 10a).

Along with the appeal Rhines also filed a Motion to Dismiss App. I (pp. 24a - 26a) and a Motion for Express Determination of the Federal Questions on the Merits. App. F (pp. 14a-15a)

These Motions were also denied by the Appeals Court.

The Appeals Court ruled,

> "We conclude that the trial court had subject matter jurisdiction because there was no administrative remedy for Norlarco to pursue and that Rhines' due process rights were not

> violated because he had a hearing before his vehicle was repossessed for nonpayment. We also conclude that because Rhines filed a separate lawsuit for alleged violations of the Fair Debt Collection Practices Act and did not make such a counterclaim here, he was not entitled to a hearing in this cause to address any such violations." App. B (p 4a)

The Appeals Court refused to recognize Rhines' claim that 15 U.S.C. § 1692g(b) rises to the level of a protected interest. Instead the Appeals Court said:

> "Here, Rhines claims that Norlarco had an administrative remedy through the FDCPA, and because it failed to pursue that remedy, the trial court lacked subject matter jurisdiction. This is incorrect. the FDCPA is a statute designed to protect *consumers* from a host of unfair, harassing, and deceptive debt collection practices. *Spears*, 745 N.E. 2d at 870. The FDCPA does not provide an administrative remedy to debt collectors..... Because the FDCPA contemplates that an action will be brought in court and because there was no administrative remedy for Norlarco to pursue, the trial court had subject matter jurisdiction." App. B (pp 8a)

Rhines contends the state grounds that the Appeals Court set forth in *Spears*, 745 N.E. 2d at 870, are not adequate to the judicial task of adjudicating Rhines' federal claims. The U.S. Supreme Court has said:

> : The duty of the trial court and the appellate court is set forth in Alexander v. Sandavol, 532 U.S. 275, at 286, 2001. "The judicial task is to interpret the statute, (in this case 15 USC §1692g(b) & § k(a)1,2,), Congress has passed to 'etermine whether it displays an intent to create not just a private right, but a private remedy."

Where there is a right there is a remedy. The provisions of 15 USC §1692g(b) & § k(a)1,2,) display (1) an intent to benefit a consumer; (2) a clearly understandable expression of that right and remedy; (3) a mandatory enforcement scheme. Blessing v. Freestone, 520 U.S. 329, at 340, 341, (1997). Rhines does not have to be an actual plaintiff or in the position of the plaintiff to invoke the Constitutional safeguards of the 5th and 14th Amendments to the Federal Constitution. He only has to point out to the court that his federal claim rises to the level of a **protected interest**. It is the duty of the appellate court to verify if the trial court correctly interpreted the statute.

The Appellate Court's statement flies in the face of settled federal law. The Accardi Doctrine is dispositive of this case. The seeds of the Accardi doctrine are found in the long settled principle that the rules (FDCPA) promulgated by a federal agency (The Federal Trade Commission),which regulate the rights and interests of others, (in this case, Rhines' federal claim to verification and cessation) are controlling upon the agency. Columbia Broadcasting System, Inc. v. United States, 316 U.S. 407 (1942). Agency regulations on which individuals are entitled to rely bind the agency. The doctrine was first announced in an immigration case in United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260 (1954), where the

Court vacated a deportation order of the Board of Immigration Appeals because the procedure leading to the order did not conform to the relevant regulations. The failure of the Board and of the Department of Justice to follow their own established procedures was held to be reversible error.

This is a case where the trial court committed reversible error by not recognizing Rhines' protected interest in having Norlarco's attorney debt collector, who is a federal actor under the Federal Trade Commission, provide verification and cessation, as required by the agency that regulates debt collectors.

Petition for rehearing and federal questions denied

A Petition for Rehearing was filed on June 13, 2006. That petition was denied on July, 12, 2006. App. C (p. 11a)

Along with the Petition for rehearing Rhines filed a second Motion For Express Determination of the Federal Questions. This motion was also denied. App. C (p. 11a)

Petition to transfer denied.

On August 10, 2006 Rhines filed a petition to transfer jurisdiction to the Indiana Supreme Court. On October 26, 2006, the petition was denied. App. A (p. 1a - 2a)

Amplification of Federal Question denied

With the Petition to Transfer Rhines filed his **Third** Motion For Express Determination of Federal Questions On the Merits of In the Alternative a "Plain Statement". For the third time the Indiana Appeals Court refused to amplify

the federal issues by (1) supplemental opinion; (2) amendment; (3) or certificate; or, (4) an alternative plain statement of whether the court based its decisions upon adequate and independent state grounds.

The Indiana Supreme Court denied Rhines third motion for federal question determination on September 11, 2006. App. K (pp. 29a)

In this motion Rhines stated in paragraphs 9 through 13:

> "9. On May 15, 2006, the Indiana Appeals Court on page 2 of its decision at the bottom of the page under footnote one (1) stated: "Appellant's Motion for Express Determination of Federal Questions on the Merits"...because we are addressing the issues raised in these motions in this opinion." The Court then went on to sweep away Rhines' federal claims by using nonfederal grounds for its decision. The Indiana Appeals Court did not make one referral to any federal case in arriving at its decision. By refusing to address Rhines' federal claims through the prism of federal case law, the Court leaves grave doubts as to whether its decision rests upon adequate and independent state grounds.
>
> 10. The U.S. Supreme Court has expressed itself on this issue, "It is fundamental that state courts be left free and unfettered by us in interpreting their state constitutions. But it is equally important that ambiguous or obscure adjudications by state courts do not stand as barriers to a

determination by this Court of the validity under the federal constitution of state action." *State of Minnesota v. National Tea*, 309 U.S. 551 at 557 (1940). In Michigan v. Long, 463 U.S. 1032, at 1042 the U.S. Supreme Court established the "plain statement" rule.

11. Rhines' now asserts his claim to the federal rule of "plain statement' as set forth in Michigan v. Long, supra. Rhines' has a 1st amendment protected interest in petitioning government for redress of grievance. This creates a federal right to request the U.S. Supreme Court to review decisions of the highest state court affecting federal issues, to this case, is conclusive to the outcome as to all parties, and as to all claims.

12. It is beyond cavil that a foot note is not a separate short plain statement or a separate supplemental opinion, amendment, or certificate.

13. It is equally beyond cavil that an opinion addressing federal claims should at least contain some reference to federal law and controlling cases. The absence of any federal grounds for its decision leaves the Indiana Appeals Court's decisions open to the charge that the decisions are ambiguous or obscure adjudications of either state or federal law.

WHEREFORE, Michael O. Rhines

> respectfully moves the Indiana Appeals Court for amplification of the federal issues either by (1) supplemental opinion; (2) amendment; (3) or certificate. Or, in the alternative, a "plain statement" as to whether it based its decisions upon adequate and independent state grounds." App. H (p. 20a-23a)

Rhines has asserted his federal claims through every stage of the trial court proceedings and his federal claims are a matter of court record. Rhines has appealed twice to the Indiana Appellate Court alleging violations of his federal rights without due process. All of his claims have been denied on nonfederal grounds in spite of the U.S. Constitution, the U.S. Supreme Court decisions, each of the Indiana Judges' oath of office, and Indiana case law.

REASONS FOR GRANTING THE WRIT

I. CASE OF FIRST IMPRESSION
No specific Supreme Ct. cite

The reasons for granting the writ turn upon two questions of federal law; (1) whether the federal statute, 15 U.S.C. § 1692g(b), rises to the level of a federally protected intangible interest protected by the 5th and 14th amendments to the Federal Constitution?

And, (2) if 15 USC 1692g(b) rises to the level of a protected interest, did the deprivation of that right by established state procedure result in a violation of the petitioner's fifth amendment rights made applicable to the states by the 14th amendment, and thus deprive the state court of its subject matter jurisdiction?

Protected Interest claimed

Rhines claims that, as a consumer, he has a protected interest in being able to dispute any consumer debt, and to require any plaintiff using a debt collector, to provide debt verification.

The U.S. Supreme Ct. has rejected the wooden distinction between "rights" and "privileges" that once seemed to govern the application of procedural due process rights. This Court has also made clear that the property interests protected by procedural due process extend well beyond actual ownership of real estate, chattels, or money. Connell v. Higginbotham, 403 U.S. 207,208, and Fuentes v. Shevin, 407 U.S. 67, 86.

It is beyond cavil that 15 U.S.C. § 1692 is not real estate, chattels, or money. Yet, because Congress has provided a civil cause of action for violations of its terms, Rhines claims that it rises to the level of an enforceable right. An enforceable right is a protectable right, and is encompassed by the 5th amendment, incorporated into the 14th amendment, and made applicable to the states.

Blessing v. Freestone

The facts in this case are not in dispute. It is the issues of federal law that are. Rhines has claimed a protected federal interest in 15 USC 1692g(b) through all stages of the trial proceedings and appeals.

Whether 15 USC §1692 is an enforceable right mandating due process is a question of law, and thus, within the purview of this Court. In Blessing v. Freestone, 520 U.S. 329 (1997), the U.S. Supreme Court set out three factors as to whether or not a statute confers a right. These three are described as follows:

(1) Congress must have intended that the provision in question benefit the plaintiff.

(2) the plaintiff must demonstrate that the right assertedly protected by the statute is not so vague and amorphous that its enforcement would strain judicial competence.

(3) the provision giving rise to the asserted right must be couched in mandatory, rather than pecatory terms.

Rhines claims that the federal statute 15 U.S.C §1692 satisfies these three factors. However, the U.S. Supreme Court has never ruled on the question of whether the Fair Debt Collection Practices Act or any portion rises to the level of a protected interest.

Transamerica Mortgage Advisors v. Lewis

In determining whether a federal statute rises to the level of a protected interest this Court said in Transamerica Mortgage Advisors v. Lewis:

> "The central inquiry remains whether Congress intended to create, either expressly or by implication, a private cause of action." 444 U.S. 11, at 23 (1979)

The federal question that needs to be settled is whether Congress, by creating a private cause of action for 15 U.S.C. § 1692, either expressly or by implication created a federal right protected by the Due Process Clause of the Federal Constitution.

The portion of the statute 1692 § k. App. J (p 28a) provides that:

(1) any actual damage sustained

by such person as a result of such failure:

(2)(A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000.00: or.....

Inadequate state grounds

The Indiana Appeals court App. B (p. 6a) said in its decision denying Rhines' federal claim that:

> 15 U.S.C. § 1692 (subtitles omitted). "The FDCPA is a broad statute that was designed to protect consumers from a host of unfair, harassing, and deceptive debt collection practices without imposing unnecessary restrictions on ethical debt collectors." *Spears v. Brennan,* 745 N.E. 2d 862, 870 (Ind. Ct. 2001) (quotation omitted), *reh'g denied.*

The Indiana Appeals court clearly relied upon state precedent amplified through *Spears,* supra. The Indiana Appeals Court was able to do this because Rhines could point to no federal case specifically amplifying the status of 15 U.S.C. § 1692 as a federally protected right that could be claimed with due process expectancy.

Enforceable is protectable

Rhines claims that because the FDCPA is an enforceable federal statute it is also rises to the level of a protected interest encompassed by the 5th and 14 amendments to the Federal Constitution.

By granting the writ the U.S. Supreme Court can seize the opportunity to close the door to the possibility of further vague and ambiguous decisions by state courts. And, by holding the provisions of 15 U.S.C § 1692 to the prism of Constitutional authority, either include or withdraw it from the penumbra of protected federal interests.

II. THE DECISION BELOW CONFLICTS WITH THIS COURT'S DECISIONS

1. Conflict With Accardi Doctrine

Rhines set up his federal claim to verification of debt and cessation, on the court record, in 15 U.S.C. § 1692g(b) within the thirty day proscribed limit. The juggernaut of established state procedure failed to provide him with his right to verification of debt and cessation of collection. Further, the trial court's conduct failed to provide him with a pre-deprivation hearing.

Rhines claims that Norlarco acted both under a federal administrative agency and in conjunction with a federal agency (the Federal Trade Commission) and did not comply with the statutory requirements of that agency. Therefore the trial court did not have subject matter jurisdiction. *Reiter v. Cooper*, 507 U.S. 259, (1993). "Where the rights of inidividuals are affected, it is incumbent upon agencies to follow their own procedures." *Morton v. Ruiz*, 415 U.S. 199, 235 (1974).

Failure to exhaust remedies

Rhines moved to have the case dismissed for failure of Norlarco to exhaust its administrative remedies.

Both the trial court App. M (p. 39a) and the Indiana Appeals Court agreed that **no remedy** existed because Norlarco was not a governmental agency.

The Indiana Appeals Court, in rejecting Rhines' federal claim, said:

> "Here, Rhines claims that Norlarco had an administrative remedy through the FDCPA, and because it failed to pursue that remedy, the trial court lacked subject matter jurisdiction. This is incorrect. the FDCPA is a statute designed to protect *consumers* from a host of unfair, harassing, and deceptive debt collection practices. *Spears*, 745 N.E. 2D at 870. The FDCPA does not provide an administrative remedy to debt collectors." App B (p. 8a)

Once again the Indiana Appeals Court reaches for state grounds that are inadequate to resolve a federal claim.

Federal question versus State question

The question isn't whether the FDCPA provides an administrative remedy to debt collectors, but whether a private party, that voluntarily places itself under the authority of a federal agency in order to avail itself of the benefits, must follow the rules of that federal agency.

Accardi Doctrine

The Indiana Appeals Court's statement flies in the

face of settled federal law. The Accardi Doctrine is dispositive of this case. The seeds of the Accardi Doctrine are found in the long settled principle that the rules (FDCPA), promulgated by a federal agency (The Federal Trade Commission), which regulate the rights and interests of others, (in this case, Rhines' federal claim to verification of debt and cessation), are controlling upon the agency. Columbia Broadcasting System, Inc., v. United States, 316 U.S. 407(1942). Agency regulations on which individuals are entitled to rely bind the agency. The doctrine was first announced in an immigration case in United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260 (1954), where the Court vacated a deportation order of the Board of Immigration Appeals because the procedure leading to the order did not conform to the relevant regulations. The failure of the Board and of the Department of Justice to follow their own established procedures was held to be reversible error.

This is a case where the trial court committed reversible error by not recognizing Rhines' protected interest in having Norlarco's attorney debt collector, who is a federal actor under the Federal Trade Commission, provide verification and cessation, as required by the agency that regulates debt collectors.

2. No Opportunity for Pre-deprivation Hearing Conflict with "Fuentes v. Shevin" and "Parrat v. Taylor"

It was Rhines' claim to the FDCPA as a significant protected interest that required a pre-deprivation hearing. The trial court's failure to hold that hearing in the face of Rhines' request for one was a deprivation of due process.

The failure of the court to order a hearing was reversible error.

Rights swept away

The Appellate Court's decision sweeps away Rhines' contention that he was denied a pre-deprivation hearing for his protected interest in the FDCPA statute by stating:

> "Though difficult to decipher, it appears that Rhines also argues that he was entitled to a hearing under the FDCPA. We note that a FDCPA claim "has nothing to do with whether the underlying debt is valid. An FDCPA claim concerns the method of collecting the debt. It does not arise out of the transaction creating the debt." *Spears*, 745 N.E. 2d at 877 (quotation omitted). Accordingly, a debtor has two options: (1) the debtor can make a counterclaim in the debt collection proceeding that the debt collector violated the FDCPA *or* (2) the debtor can file a separate lawsuit against the debt collector for violation of the FDCPA. See *id.*
>
> Here, Rhines apparently chose the latter, as Rhines filed a lawsuit against O'Connor for violation of the FDCPA that is currently pending in the United States District Court for the Northern District of Indiana. See Rhines v. O'Connor, No. 3:05 CV 200 (N.D. Ind. 2005). Although Rhines filed a counterclaim in this case, it had nothing to do with the FDCPA. *See* Appellee's App. p. 11. Because Rhines did not make a counterclaim in this case pursuant to the FDCPA and because Rhines is pursuing his FDCPA rights in federal court, the trial court was not required to hold a hearing in this case

to address any alleged violations of the FDCPA. There is no error on this issue as well."

"It is enough to invoke the procedural safeguards of the Fourteenth Amendment that a significant property interest is at stake....," Fuentes v. Shevin, 407 U.S. 67, at 86, (1971). How long will it take before the Indiana Courts realize that 'property' includes intangible benefits as well as tangible chattels?

By refusing to even acknowledge that Rhines made a claim for the FDCPA as property protected by the Fourteenth Amendment, the Indiana Appellate Court's decision deleted Rhines' claim to federal rights and thereby engaged in affirming conduct that contravened the 5th and 14th Amends. to the U.S. Constitution and laws for the United States.

Rhines timely and properly raised the issue of Norlarco's attorney debt collector's failure to pursue an administrative remedy or comply with the exhaustion doctrine. When the trial court ignored his Motion to Dismiss without holding a hearing, Rhines' federally protected right to due process for a federally created right was contravened by the trial court. At that moment the trial court lost its jurisdiction to render a valid judgment against Rhines.

The conduct that deprived Rhines of his significant protected interests was conduct pursuant to established state procedure. When state authorized conduct deprives an individual, such as Rhines, a significant protected interest without a hearing, then a later post deprivation hearing is insufficient. In Parrat v. Taylor, 451 U.S. 526, 540, 541(1981) and Hudson v. Palmer, 468 U.S. 517, at 532 (1984) the U.S. Supreme Court restated the standard for due process deprivations pursuant to established state

procedure. "Two terms ago, we reaffirmed our holding in Parrat in Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982), in the course of holding that post-deprivation remedies do not satisfy due process where a deprivation of property is caused by conduct pursuant to established state procedure..."

It is federal law that creates a right for Rhines in the FDCPA. It is federal case law that sustains that right against intrusion by the state. Freestone v. Blessing, supra, defines the boundaries for federal rights created by Congress. Fuentes v. Shevin, supra, affirms the absolute necessity of a pre-deprivation hearing by the state before that federal right can be deprived. And, both Parrat and Hudson, supra, hold that post-deprivation remedies are insufficient.

As a practical matter, this case should be remanded with an order to dismiss . To require a debt collector to comply with the rules of his agency will actively encourage such compliance. Careless observance by an agency of its own administrative processes weakens its effectiveness in the eyes of the public because it exposes the possibility of favoritism and the inconsistent application of the law.

III.

THE DECISION BELOW, IF PERMITTED TO STAND, WILL VEST THE STATE COURTS WITH A FALSE JURISDICTION TO MAKE VAGUE AND AMBIGUOUS DETERMINATIONS OF FEDERAL RIGHTS.

Review of federal question (28 U.S.C. § 1257)

Final judgments or decrees rendered by the highest

court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where.....or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution.....or statutes of.....the United States.

Federal question must be properly presented
Rule 11(g)(i)

In cases coming from state courts the Supreme Court will not review a federal question unless the question has properly been presented in the state court. Rule 11(g)(i) directs that specific showings shall be made in the petition for certiorari as to how the federal questions were raised and passed upon in the state court proceedings.

If the federal question has been expressly passed on by the highest court of the state, then it does not matter how tardily the federal question was presented in the state proceedings.

Plain statement rule

The U.S. Supreme Court has expressed itself on this issue,

> "It is fundamental that state courts be left free and unfettered by us in interpreting their state constitutions. But it is equally important that ambiguous or obscure adjudications by state courts do not stand as barriers to a determination by this Court of the validity under the federal constitution of state action." *State of Minnesota v. National Tea*, 309 U.S. 551 at 557 (1940).

In Michigan v. Long, 463 U.S. 1032, at 1042 the U.S. Supreme Court established the "plain statement" rule. This allowed the petitioner for certiorari to obtain an amplification of the federal issues either by (1) supplemental opinion; (2) amendment; (3) or certificate. Or, in the alternative, a "plain statement" as to whether it based its decisions upon adequate and independent state grounds.

Three motions for "plain statement" denied

On August 10, 2006, Rhines filed his third motion for determination of the federal questions on the merits or in the alternative, a "plain statement." This motion was denied on 9/11/06 by the Indiana Appeals Court. App H (p. 20a)

Article VI of the U.S. Const. states:

> This constitution, and the laws of the United States which shall be made...under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby....

Further, the U.S. Const. states in Article III, sections 2, & 3:

> (1) The judicial power shall extend to all cases, in law and equity, arising under this constitution. the laws for the United States.....
> (2) .....In all other cases before

> mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

In Rhines' third motion for determination of federal questions points to the Indiana Supreme Court that:

COMES NOW the appellant (defendant below), Michael O. Rhines, and respectfully shows the Court the following:

1. This is an appeal seeking the vindication of federally protected rights that cannot be valued solely in monetary terms.

2. Rhines has asserted his federal claims at every stage of the proceedings and on two appeals to this Court.

3. Neither the lower trial court or Indiana Appellate Court has passed upon, made probative inquiry, ordered a hearing, or amplified the federal grounds that were used in arriving at their opinions.

Jurisdiction of U.S. Supreme Ct. obstructed

The language of the U.S. Constitution is clear and unequivocal in Art. III secs. 2 & 3. Appellate jurisdiction, over federal questions, rests with this Court. Art. VI provides that the U.S. Const. is the supreme law of the land, and, all state judges are bound thereby.

It seems reasonably conclusive in light of this language that the Indiana trial court, the Indiana Appeals Court, and the Indiana Supreme Court, acted in defiance of the U.S. Constitution, and presumptuously obstructed the

appellate jurisdiction of the U.S. Supreme Court.

The Indiana Appeals Court and the Indiana Supreme Court slapped down Rhines claims three times without amplification of the federal question either by (1) supplemental opinion; (2) amendment; (3) or certificate. Or, in the alternative, a "plain statement" as to whether it based its decisions upon adequate and independent state grounds as established in In Michigan v. Long, 463 U.S. 1032, at 1042.

Presumption of U.S. Supreme Court indifference

When the language of the U.S. Constitution is clear. And state courts have ample opportunity to remedy constitutional error, but still remain unmoved time after time. It can rationally be concluded, that where state court decisions are sought to be reviewed, the state courts presumptuously view the attitude of the U.S. Supreme Court to be that of unfailing indifference.

Failure to review vests false authority

It is the expectation of perfunctory denial of federal question jurisdiction by the U.S. Supreme Court that undermines the authority of the Constitution and the respect for the U.S. Supreme Court in the eyes of state appellate courts. Why be concerned with the correct determination of federal questions which will never be reviewed?

By allowing the courts of Indiana to scuttle federal rights. to obstruct U.S. Supreme jurisdiction, and slap down the authority of the U.S. Constitution, the UNITED STATES SUPREME COURT will vest a false authority in all state courts to determine federal questions in their own time and at their own discretion.

This false vested authority, unless arrested, will in

time lead, not only to a profusion of vague and ambiguous federal question determinations by the state courts, but will condone and ever broadening encroachment into federal question jurisdiction by the judiciary of the respective states.

CONCLUSION

The Indiana Appellate Court's state grounds for affirming the lower trial court's decision were neither adequate or independent state grounds. Adequate and independent state grounds were impossible when the trial court contravened the U.S. Constitution and thereby lost its jurisdiction.

The Indiana Appellate Courts have defied the language of the U.S. Constitution and obstructed the appellate jurisdiction of the U.S. Supreme Court.

WHEREFORE Rhines prays this Court to grant a writ of certiorari to review state court conduct that is contumacious to the Constitution and contemptuous of federal law.

Respectfully submitted,

Michael O. Rhines

Michael O. Rhines
Pro Se
1121 Wabash St.
Rochester, IN 46975
(928) 273-0885

APPENDIX A

Kevin S. Smith
Clerk

CLERK

SUPREME COURT, COURT OF APPEALS,
AND TAX COURT

STATE OF INDIANA

217 STATE HOUSE, INDIANAPOLIS, IN 46204
317-232-1930 • FAX 317-232-8365

	Cause Number
RHINES, MICHAEL O.	25A03-0506-CV-00275
1121 WABASH ST.	Lower Court Number:
ROCHESTER, IN 46975	25 D010404CC58

RHINES, MICHAEL O. ET AL. -V- NORLARCO CREDIT UNION

You are hereby notified that the SUPREME COURT has on this day 10/26/06 THIS MATTER HAS COME BEFORE THE INDIANA SUPREME COURT ON A PETITION TO TRANSFER JURISDICTION FOLLOWING THE ISSUANCE OF A DECISION BY THE COURT OF APPEALS. THE PETITION WAS FILED PURSUANT TO APPELLATE RULE 57. THE COURT HAS REVIEWED THE DECISION OF THE COURT OF APPEALS. AND RECORD ON APPEAL THAT WAS SUBMITTED HAS BEEN MADE AVAILABLE TO THE COURT FOR REVIEW, ALONG WITH ANY AND ALL BRIEFS THAT MAY HAVE

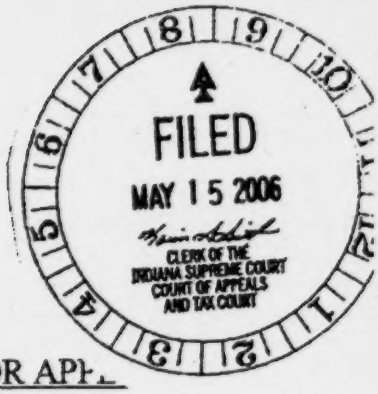
BEEN FILED IN THE COURT OF APPEALS AND ALL MATERIALS FILED IN CONNECTION WITH THE REQUEST TO TRANSFER JURISDICTION. EACH PARTICIPATING MEMBER OF THE COURT HAS VOTED ON THE PETITION. EACH PARTICIPATING MEMBER HAS HAD THE OPPORTUNITY TO VOICE THAT JUSTICE'S VIEWS ON THE CASE IN CONFERENCE WITH OTHER JUSTICES.

BEING DULY ADVISED, THE COURT NOW DENIES THE APPELLANT'S PETITION TO TRANSFER OF JURISDICTION.

RANDALL T. SHEPARD, CHIEF JUSTICE
ALL JUSTICES CONCUR. KM

WITNESS my name and the seal of said Court, this 26th day of OCTOBER, 2006.

"s/ Kevin S. Smith"
Clerk, Supreme Court, Court of Appeals, and Tax Court



APPENDIX B

PRO SE APPELLANT ATTORNEY FOR APP.

MICHAEL O. RHINES
Rochester, Indiana

TIMOTHY J. O'CONNOR
O'Connor & Auersch
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

MICHAEL O. RHINES	)	
Appellant-Defendant	)	
	)	
vs.	)	No.25A03-0506-
	)	CV-275
NORLARCO CREDIT UNION	)	
	)	
Appellee-Plantiff.	)	

APPEAL FROM THE FULTON SUPERIOR COURT
The Honorable Wayne Steele, Judge
Cause No. 25D01-0404-CC-58

May 15, 2006
OPINION - FOR PUBLICATION

VAIDIK, Judge

Case Summary

Michael O. Rhines (Rhiness"), pro se, appeals the trial court's grant of summary judgment in favor of Norlarco Credit Union ("Norlarco"). We conclude that the trial court had subject matter jurisdiction because there was no administrative remedy for Norlarco to pursue and that Rhines' due process rights were not violated because he had a hearing before his vehicle was repossessed for nonpayment. We also conclude that because Rhines filed a separate lawsuit for alleged violations of the Fair Debt Collection Practices Act and did not make such a counterclaim here, he was not entitled to a hearing in this cause to address any such violations. Finally, we conclude that Rhines was not entitled to have his non-attorney friend act as his advocate at the summary judgment hearing. We affirm the trial court.[1]

Facts and Procedural History

In July 2000, Michael and Pamela Rhines purchased a truck from a Chevrolet dealership in Denver, Colorado. The Rhineses executed a Credit Sale Contract and Security Agreement ("the Note"), which was thereafter assigned to Norlarco. The Note provided that the principal amount financed was $10,679.75 and that the interest rate was 17.9%. The Note also provided that the Rhineses were

---

[1] We hereby deny the motions Rhines has filed before this Court entitled "Appellant's Motion for Express Determination of Federal Question on the Merits" and "Appellant's Verified Motion to Dismiss for Lack of Subject Matter Jurisdiction" because we are addressing the issues raised in these motions in

this opinion.

required to make monthly payments in the amount of $272.60 for a period of sixty months. The Note included a security agreement, which made the vehicle collateral for the loan.

The Rhineses eventually moved to Indiana and divorced. As part of the divorce, Rhines was awarded the vehicle, and he was ordered to make the monthly payments on it. Rhines made his last payment on August 5, 2003. In April 2004, Norlarco filed a Complaint against the Rhineses seeking a money judgment, replevin of the vehicle, and a writ of assistance from the sheriff to assist in removing the vehicle from Rhines' possession. A default judgment was subsequently entered against Pamela only. In February 2005, Norlarco filed a motion for summary judgment against Rhines, who was representing himself throughout these proceedings.[2] Following a hearing, the trial court entered summary judgment in favor of Norlarco. Rhines, pro se, now appeals.

Discussion and Decision

We first observe that this case involves the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 et seq. We therefore provide some background information

---

[2] Before Norlarco filed its motion for summary judgment against Rhines, Rhines filed numerous pro se motions in the trial court, including a motion to dismiss for failure of Norlarco to exhaust its administrative remedies. Rhines appealed the denial of his motion to dismiss to this Court, and we affirmed because it was a permissive interlocutory order for which Rhines failed to seek certification. *Rhines v. Norlardo*, No. 25 A05-0509-CV-520 (Ind. Ct. App. Feb. 9, 2005). Our Supreme Court then

denied Rhines' petition to transfer.

on the FDCPA before addressing the issues presented in this case.

In enacting the FDCPA, Congress stated its findings and declared the purposes of the act as follows:

> (a) There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.
>
> (2) Existing laws and procedures for redressing these injuries are inadequate to protect consumers.
>
> (c) Means other than misrepresentations or other abusive debt collection practices are available for the effective collection of debts.
>
> * * * * *
>
> (e) It is the purpose of this subchapter to eliminate debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competivelly disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

15 U.S.C. § 1692 (subtitles omitted). "The FDCPA is a broad statute that was designed to protect consumers from a host of unfair, harassing, and deceptive debt collection practices without imposing unnecessary restrictions on ethical debt collectors." *Spears v. Brennan*, 745 N.E. 2d 862, 870 (Ind. Ct. 2001) (quotation omitted), *reh'g denied*.

Rhines raises numerous issues in this appeal, which we consolidate and restate as follows.[3] First, he contends that the trial court did not have subject matter jurisdiction. Second, Rhines contends that he was entitled to a hearing before his vehicle was repossessed. Third, he contends that he was entitled to have his non-attorney friend act as his advocate at the summary judgment hearing. Last, Rhines contends that the trial court erred in granting summary judgment in favor of Norlarco. We analyze each issue in turn.

I. Subject Matter Jurisdiction

Rhines first contends that the trial court did not have subject matter jurisdiction because Norlarco "failed to exhaust its administrative remedies." Appellant's Br. p. 12. Subject matter jurisdiction refers to the power of courts to hear and decide a particular class of cases. *State Bd. of Tax Comm'rs v. Ispat Inland, Inc.*, 787 N.E. 2d 477, 480 (Ind. 2003); *Kondamuri v. Kondamuri*, 799 N.E.2d 1153, 1156 (Ind. Ct. App. 2003), *trans. denied.* The issue of subject matter jurisdiction is resolved by determining whether the claim involved falls within the general scope of authority conferred on the court by the Indiana Constitution or by statute. *Kondamuri*, 799 N.E. 2d at 1156. When courts lack subject matter jurisdiction, their actions are *void ab initio* and may be attacked at any time. *Id.*

Failure to exhaust administrative remedies deprives trial courts of subject matter jurisdiction. *Johnson v. Celebration Fireworks, Inc.*, 829 N.E. 2d 979,984 (Ind. 2005). That is, an administrative remedy, where one is

---

[3] We commend counsel for Norlarco on his good brief, which has helped identify the issues and apply the law in this

case.
available, must be pursued before a claimant is allowed access to the courts. *Sun Life Assurance Co. of Canada v. Ind. Comprehensive Health Ins. Ass'n*, 827 N.E.2d 1206, 1209 (Ind. Ct. App. 2005), *trans. denied.* If the facts before the trial court are undisputed, then an issue of subject matter jurisdiction presents a pure question of law and it reviewed *de novo. M-Plan, Inc. v Comprehensive Health Ins. Ass'n*, 809 N.E. 2d 834, 837 (Ind. 2004).

Here, Rhines claims that Norlarco had an administrative remedy through the FDCPA, and because it failed to pursue that remedy, the trial court lacked subject matter jurisdiction. This is incorrect. the FDCPA is a statute designed to protect *consumers* from a host of unfair, harassing, and deceptive debt collection practices. *Spears*, 745 N.E. 2D at 870. The FDCPA does not provide an administrative remedy to debt collectors. Rather, the FDCPA provides in pertinent part:

> [A]ny debt collector who fails to comply with any provision of [the act] is liable to such person in an amount equal to the sum of——
> (1) any actual damage sustained by such person as a result of such failure;
> (2)(A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000;.....

15 U.S.C. § 1692k(a), As for jurisdiction, the FDCPA provides:

> An action to enforce any liability created by this subchapter may be brought in any

> appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

Id. at (d). Because the FDCPA contemplates that an action will be brought in court and because there was no administrative remedy for Norlarco to pursue, the trial court had subject matter jurisdiction.

II. Pre-Deprivation Hearing

Rhines next contends that pursuant to the Fourteenth Amendment of the United States Constitution, he was entitled to a hearing before his vehicle was repossessed. The Fourteenth Amendment prohibits any state from depriving a person of life, liberty, or property without due process of law. U.S. Const. amend. XIV. Due process generally requires notice and an opportunity to be heard. See *Hall v. Terry*, 837 N.E. 2d 1095, 1099 (Ind. Ct. App. 2005). Assuming without deciding that the United States Constitution required a pre-deprivation hearing under the facts of this case, we point out that Rhines, in fact, had a hearing before the trial court issued its replevin order. Specifically, Norlarco filed a complaint against Rhines seeking, among other things, replevin of the vehicle. Rhines was given notice of the suit. Norlarco then filed a motion for summary judgment against Rhines, and a hearing was held, at which Rhines appeared and was able to present his version of the case. Accordingly, Rhines received a hearing before the trial court issued its replevin order. There is no error on this issue.

Though difficult to decipher, it appears that Rhines also argues that he was entitled to a hearing under the

FDCPA. We note that a FDCPA claim "has nothing to do with whether the underlying debt is valid. An FDCPA claim concerns the method of collecting the debt. It does not arise out of the transaction creating the debt." *Spears*, 745 N.E. 2d at 877 (quotation omitted). Accordingly, a debtor has two options: (1) the debtor can make a counterclaim in the debt collection proceeding that the debt collector violated the FDCPA *or* (2) the debtor can file a separate lawsuit against the debt collector for violation of the FDCPA. See *id.*

Here, Rhines apparently chose the latter, as Rhines filed a lawsuit against O'Connor for violation of the FDCPA that is currently pending in the United States District Court for the Northern District of Indiana. See Rhines v. O'Connor, No. 3:05 CV 200 (N.D. Ind. 2005). Although Rhines filed a counterclaim in this case, it had nothing to do with the FDCPA. *See* Appellee's App. p. 11. Because Rhines did not make a counterclaim in this case pursuant to the FDCPA and because Rhines is pursuing his FDCPA rights in federal court, the trial court was not required to hold a hearing in this case to address any alleged violations of the FDCPA. There is no error on this issue as well.

.....

Affirmed

ROBB, J., and MATHIAS, J., concur.

APPENDIX C

Kevin S. Smith
Clerk

CLERK

SUPREME COURT, COURT OF APPEALS,
AND TAX COURT

STATE OF INDIANA

217 STATE HOUSE, INDIANAPOLIS, IN 46204
317-232-1930 • FAX 317-232-8365

	Cause Number
RHINES, MICHAEL O.	25A03-0506-CV-00275
1121 WABASH ST.	Lower Court Number:
ROCHESTER, IN 46975	25 D010404CC58

RHINES, MICHAEL O. ET AL. -V- NORLARCO CREDIT UNION

You are hereby notified that the COURT OF APPEALS has on this day 7/12/06 APPELLANT'S PETITION FOR REHEARING DENIED.

JAMES S. KIRSCH, CHIEF JUDGE

KM

WITNESS my name and the seal of said Court, this 12th day of JULY, 2006.

"s/ Kevin S. Smith
Clerk, Supreme Court, Court of Appeals,
and Tax Court

APPENDIX D

STATE OF INDIANA	)	IN THE FULTON
	) SS:	SUPERIOR COURT
COUNTY OF FULTON	)	
		2005 TERM
NORLARCO CREDIT UNION	)	
Plaintiff	)	
VS	)	CAUSE NO. 25D01-0404-CC-00058
PAMELA A. RHINES and MICHAEL O. RHINES	)	
Defendant's	)	

ORDER

This matter is before The Court on Defendant's pro-se Motion To Correct Error In Objection to Court's Summary Judgment order of April 14, 2005.

The Court being duly advised now DENIES Defendant's Motion To Correct Error.

SO ORDERED this 17th day of May, 2005.

"s/ Wayne Steele"
Wayne E. Steele, Judge
Fulton Superior Court

cc: Michael Rhines
Timothy O'Connor, Esquire

APPENDIX E

YOU HAVE BEEN NAMED A DEFENDANT IN THIS LAWSUIT. PLEASE READ THIS NOTICE CAREFULLY.

THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

The office of O'CONNOR & AUERSCH represents the Plaintiff in this lawsuit with regard to your delinquent account. As you may know, the Plaintiff has or will file suit against you. The Summons and Complaint may accompany this Notice, or you may be receiving a copy of the summons and complaint shortly. You have a right to dispute this debt, or any portion of it. Unless you notify this office with thirty (30) days after receiving this notice that you dispute the validity of the debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within thirty (30) days from receiving this notice, this office will: obtain verification of the debt or obtain a copy of the judgment and will mail you a copy of such verification or judgment. If you request from this office in writing within thirty (30) days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

You may contact this office at:

O'CONNOR & AUERACH

APPENDIX F

IN THE
INDIANA COURT OF APPEALS

Case No. 2 5A03-0506-CV-275

MICHAEL O. RHINES	)	Appeal from the
	)	Fulton Superior Court
Appellant	)	
Defendant	)	Lower Cause No.
Below	)	25D01-0404-CC-58
	)	
v.	)	
	)	The Honorable
NORLARCO CREDIT	)	Wayne Steele,
UNION	)	Judge.
	)	
Appellee	)	
Plaintiff	)	
Below	)	

APPELLANT'S MOTION FOR EXPRESS DETERMINATION OF FEDERAL QUESTIONS ON THE MERITS

COMES NOW the appellant (defendant below), Michael O. Rhines, and respectfully shows the Court the following:

1. This is an appeal seeding the vindication of federally protected rights that cannot be valued solely in monetary terms.

2. Whether Rhines has a protected federal

statutory entitlement is a federal question that can only be resolved by the application of federal law, the U.S. Constitution, and U.S. Supreme Court decisions.

3. Whether Norlarco Credit's debt collector attorney, Timothy O'Connor, failed to comply with the exhaustion doctrine by not providing verification and cessation on the trial court record is an issue that can only be resolved by application federal law and U.S. Supreme Court decisions.

4. Whether the trial court denied Rhines an opportunity for a pre-deprivation hearing is a federal question that can only be resolved by the application of federal law, the U.S. Constitution, and U.S. Supreme Court decisions.

5. Whether the trial court ultimately denied Rhines an opportunity for a hearing adequate to the nature of the case and meaningful in time and manner is a federal question that can only be resolved by the application of federal law, the U.S. Constitution, and U.S. Supreme Court decisions.

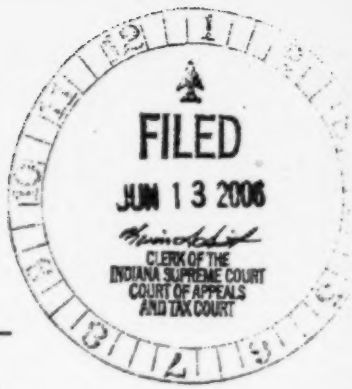
6. Application of any of the foregoing federal issues, to this case, is conclusive the outcome as to all parties, and as to all claims.

WHEREFORE, Michael O. Rhines respectfully moves the Indiana Appeals Court for amplification of the federal issues either by (1)supplemental opinion; (2) amendment; (3) or certificate.

Respectfully submitted,

"s/ M. Rhines"

APPENDIX G



IN THE
INDIANA COURT OF APPEAL

Case No. 2 5A03-0506-CV-275

MICHAEL O. RHINES	)	Appeal from the
	)	Fulton Superior Court
Appellant	)	
Defendant	)	Lower Cause No.
Below	)	25D01-0404-CC-58
	)	
v.	)	
	)	The Honorable
NORLARCO CREDIT	)	Wayne Steele,
UNION	)	Judge.
Appellee	)	
Plaintiff	)	
Below	)	

APPELLANT'S SECOND MOTION FOR EXPRESS DETERMINATION OF FEDERAL QUESTIONS ON THE MERITS OR IN THE ALTERNATIVE A "PLAIN STATEMENT"

COMES NOW the appellant (defendant below), Michael O. Rhines, and respectfully shows the Court the following:

1. This is an appeal seeking the vindication of federally protected rights that cannot be valued solely in

monetary terms.

2. Rhines has asserted his federal claims at every stage of the proceedings and on two appeals to this Court.

3. Neither the lower trial court or Indiana Appellate Court has passed upon, made probative inquiry, ordered a hearing, or amplified the federal grounds that were used in arriving at their opinions.

4. Whether Rhines has a protected federal statutory entitlement as described in the Fair Debt Collection Practices Act is a federal question that can only be resolved by the application of federal law, the U.S. Constitution, and U.S. Supreme Court decisions. The controlling federal case is *Freestone v. Blessing*, 520 U.S. (1997).

5. Whether Norlarco Credit's debt attorney, Timothy O'Connor failed to comply with the exhaustion doctrine by not providing verification and cessation on the trial court record is an issue that can only be resolved by application of federal law and U.S. Supreme Court decisions. The controlling federal cases are *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954) "the Accardi Doctrine," and *Columbia Broadcasting System, Inc, v. United States*, 316 U.S 407 (1942).

6. Whether the trial court denied Rhines an opportunity for a pre-deprivation hearing is a federal question that can only be resolved by the application of federal law, the U.S. Constitution, and U.S. Supreme Court decisions. The federal controlling cases are Parrot v. Taylor, 451 U.S. 526, 540,541 (1981) and Hudson v. Palmer, 468 U.S. 517, at 532 (1984).

7. Whether the trial court ultimately denied Rhines an opportunity for a hearing adequate to the nature of the case and meaningful in time and manner is a federal

question that can only be resolved by the application of federal law, the U.S. Constitution, and U.S. Supreme Court decisions.

8. Application of any of the foregoing federal issues, to this case, is conclusive to the outcome as to all parties, and as to all claims.

9. On May 15, 2006, the Indiana Appeals Court on page 2 of its decision at the bottom of the page under footnote one (1) stated: "Appellant's Motion for Express Determination of Federal Questions on the Merits"...because we are addressing the issues raised in these motions in this opinion." The Court then went on to sweep away Rhines' federal claims by using nonfederal grounds for its decision. The Indiana Appeals Court did not make one referral to any federal case in arriving at its decision. By refusing to address Rhines' federal claims through the prism of federal case law, the Court leaves grave doubts as to whether its decision rests upon adequate and independent state grounds.

10. The U.S. Supreme Court has expressed itself on this issue, "It is fundamental that state courts be left free and unfettered by us in interpreting their state constitutions. But it is equally important that ambiguous or obscure adjudications by state courts do not stand as barriers to a determination by this Court of the validity under the federal constitution of state action." *State of Minnesota v. National Tea*, 309 U.S. 551at 557 (1940). In Michigan v. Long, 463 U.S. 1032, at 1042 the U.S. Supreme Court established the "plain statement" rule.

11. Rhines' now asserts his claim to the federal rule of "plain statement' as set forth in Michigan v. Long, supra. Rhines' has a 1st amendment protected interest in petitioning government for redress of grievance. This creates a federal right to request the U.S. Supreme Court to review decisions of the highest state court affecting federal

rights. Incidental to that interest is the requirement that he show the U.S. Supreme Court that they have jurisdiction to review the state court decision. This is accomplished by including an amplification by (1) supplemental opinion; (2) amendment; (3) or certificate from the highest state court that their decision rests upon adequate and independent state grounds. Or, in the alternative, a short plain statement, that the highest court in the state has used adequate and independent state grounds in arriving at its decision.

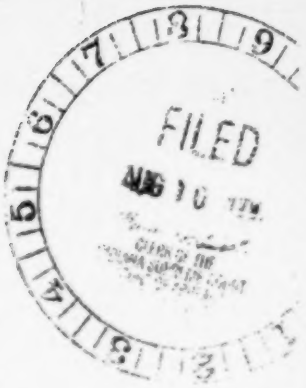
12. It is beyond cavil that a foot note is not a separate short plain statement or a separate supplemental opinion, amendment, or certificate.

13. It is equally beyond cavil that an opinion addressing federal claims should at least contain some reference to federal law and controlling cases. The absence of any federal grounds for its decision leaves the Indiana Appeals Court's decisions open to the charge that the decisions are ambiguous or obscure adjudications of either state or federal law.

WHEREFORE, Michael O. Rhines respectfully moves the Indiana Appeals Court for amplification of the federal issues either by (1) supplemental opinion; (2) amendment; (3) or certificate. Or, in the alternative, a "plain statement" as to whether it based its decisions upon adequate and independent state grounds.

Respectfully submitted,

"s/ M. Rhines"



APPENDIX H

IN THE
INDIANA COURT OF APPEALS

Case No. 2 5A03-0506-CV-275

MICHAEL O. RHINES	)	Appeal from the
	)	Fulton Superior Court
Appellant	)	
Defendant	)	Lower Cause No.
Below	)	25D01-0404-CC-58
	)	
v.	)	
	)	The Honorable
NORLARCO CREDIT	)	Wayne Steele,
UNION	)	Judge.
Appellee	)	
Plaintiff	)	
Below	)	

APPELLANT'S THIRD MOTION FOR EXPRESS DETERMINATION OF FEDERAL QUESTIONS ON THE MERITS OR IN THE ALTERNATIVE A "PLAIN STATEMENT"

COMES NOW the appellant (defendant below), Michael O. Rhines, and respectfully shows the Court the following:

1. This is an appeal seeking the vindication of federally protected rights that cannot be valued solely in

monetary terms.

2. Rhines has asserted his federal claims at every stage of the proceedings and on two appeals to this Court.

3. Neither the lower trial court or Indiana Appellate Court has passed upon, made probative inquiry, ordered a hearing, or amplified the federal grounds that were used in arriving at their opinions.

4. Whether Rhines has a protected federal statutory entitlement as described in the Fair Debt Collection Practices Act is a federal question that can only be resolved by the application of federal law, the U.S. Constitution, and U.S. Supreme Court decisions. The controlling federal case is *Freestone v. Blessing*, 520 U.S. (1997).

5. Whether Norlarco Credit's debt attorney, Timothy O'Connor failed to comply with the exhaustion doctrine by not providing verification and cessation on the trial court record is an issue that can only be resolved by application of federal law and U.S. Supreme Court decisions. The controlling federal cases are *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954) "the Accardi Doctrine," and *Columbia Broadcasting System, Inc. v. United States*, 316 U.S 407 (1942).

6. Whether the trial court denied Rhines an opportunity for a pre-deprivation hearing is a federal question that can only be resolved by the application of federal law, the U.S. Constitution, and U.S. Supreme Court decisions. The federal controlling cases are Parrot v. Taylor, 451 U.S. 526, 540,541 (1981) and Hudson v. Palmer, 468 U.S. 517, at 532 (1984).

7. Whether the trial court ultimately denied Rhines an opportunity for a hearing adequate to the nature of the case and meaningful in time and manner is a federal

8. Application of any of the foregoing federal

issues, to this case, is conclusive to the outcome as to all parties, and as to all claims.

9. On May 15, 2006, the Indiana Appeals Court on page 2 of its decision at the bottom of the page under footnote one (1) stated: "Appellant's Motion for Express Determination of Federal Questions on the Merits"...because we are addressing the issues raised in these motions in this opinion." The Court then went on to sweep away Rhines' federal claims by using nonfederal grounds for its decision. The Indiana Appeals Court did not make one referral to any federal case in arriving at its decision. By refusing to address Rhines' federal claims through the prism of federal case law, the Court leaves grave doubts as to whether its decision rests upon adequate and independent state grounds.

10. The U.S. Supreme Court has expressed itself on this issue, "It is fundamental that state courts be left free and unfettered by us in interpreting their state constitutions. But it is equally important that ambiguous or obscure adjudications by state courts do not stand as barriers to a determination by this Court of the validity under the federal constitution of state action." *State of Minnesota v. National Tea*, 309 U.S. 551at 557 (1940). In Michigan v. Long, 463 U.S. 1032, at 1042 the U.S. Supreme Court established the "plain statement" rule.

11. Rhines' now asserts his claim to the federal rule of "plain statement' as set forth in Michigan v. Long, supra. Rhines' has a 1st amendment protected interest in petitioning government for redress of grievance. This creates a federal right to request the U.S. Supreme Court to review decisions of the highest state court affecting federal issues, to this case, is conclusive to the outcome as to all parties, and as to all claims.

12. It is beyond cavil that a foot note is not a

separate short plain statement or a separate supplemental opinion, amendment, or certificate.

13. It is equally beyond cavil that an opinion addressing federal claims should at least contain some reference to federal law and controlling cases. The absence of any federal grounds for its decision leaves the Indiana Appeals Court's decisions open to the charge that the decisions are ambiguous or obscure adjudications of either state or federal law.

WHEREFORE, Michael O. Rhines respectfully moves the Indiana Appeals Court for amplification of the federal issues either by (1) supplemental opinion; (2) amendment; (3) or certificate. Or, in the alternative, a "plain statement" as to whether it based its decisions upon adequate and independent state grounds.

Respectfully submitted,
8/10/2006

"s/ M. Rhines"

APPENDIX I

IN THE
INDIANA COURT OF APPEAL.

Case No. 2 5A03-0506-CV-275

MICHAEL O. RHINES	)	Appeal from the
	)	Fulton Superior Court
Appellant	)	
Defendant	)	Lower Cause No.
Below	)	25D01-0404-CC-58
	)	
v.	)	
	)	The Honorable
NORLARCO CREDIT	)	Wayne Steele,
UNION	)	Judge.
Appellee	)	
Plaintiff	)	
Below	)	

APPELLANT'S VERIFIED MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

COMES NOW the appellant (defendant below) Michael O. Rhines and for his Verified Motion to Dismiss for Lack of Subject Matter Jurisdiction respectfully states:

I. Grounds

Rhines moves the Court to dismiss the action against him separately for lack of subject matter jurisdiction on the

following grounds:

1. As reflected in the trial court record Norlarco Credit violated federal law by not complying with the administrative requirements of 15 USC 1692(g)(b), a federal statute requiring Norlarco's debt collector attorney to provide verification upon request and cessation of collection upon notice of consumer dispute of debt.

2. As reflected in the trial court record the conduct of the trial court failed to provide an opportunity for a pre-deprivation hearing for a federal statutory entitlement, thus denying the trial court its jurisdiction to render a final binding judgment.

3. As reflected in the trial court record the trial court ultimately failed to provide a hearing that was adequate to the nature of the case and meaningful in time and manner thus denying the trial court its jurisdiction to render a final binding judgment.

Facts and Supporting Law

For his statement of facts and supporting law Rhines directs the Court to his Appeals Brief, and Appendix, that are filed with this motion.

Request for Relief

Rhines moves the Court to review the trial court's jurisdiction de novo, set aside the trial court's order, and remand the case back to the trial court with an order to dismiss the action against Michael O. Rhines for lack of subject matter jurisdiction

Verification

I verify under the penalties for perjury that the foregoing representations in my brief and appendix are true.

"s/ M. Rhines"

Respectfully submitted,

"/ M. Rhines"
Michael O. Rhines

APPENDIX J

§ 1692g. Validation of debts

(a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

(1) the amount fo the debt;

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing witin the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the conumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) Disputed debts

If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the

original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

1692k Civil liability
(a) amount of damages

Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of such failure:

(2)(A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000.00: or.....

APPENDIX K

Kevin S. Smith
Clerk

CLERK

SUPREME COURT, COURT OF APPEALS,
AND TAX COURT

STATE OF INDIANA

217 STATE HOUSE, INDIANAPOLIS, IN 46204
317-232-1930 • FAX 317-232-8365

	Cause Number
RHINES, MICHAEL O.	25A03-0506-CV-00275
1121 WABASH ST.	Lower Court Number:
ROCHESTER, IN 46975	25 D010404CC58

RHINES, MICHAEL O. ET AL. -V- NORLARCO CREDIT UNION

You are hereby notified that the COURT OF APPEALS has on this day 9/11/06 APPELLANT'S THIRD MOTION FOR EXPRESS DETERMINATION OF FEDERAL QUESTIONS ON THE MERITS DENIED.

JAMES S. KIRSCH, CHIEF JUDGE

KM

WITNESS my name and the seal of said Court, this 11th day of sEPTEMBER, 2006.

"s/ Kevin S. Smith"

FILE
IN CLERK'S OFFICE
MAY 12 2005
Karen Miller
CLERK, FULTON SUPERIOR COU

APPENDIX L

STATE OF INDIANA	)	IN THE FULTON
	) SS:	SUPERIOR COURT
COUNTY OF FULTON	)	
		2005 TERM
NORLARCO CREDIT UNION	)	
Plaintiff	)	
VS	)	CAUSE NO. 25D01-0404-CC-00058
PAMELA A. RHINES and MICHAEL O. RHINES	)	
Defendant's	)	

COMES NOW the Defendant, Michael O. Rhines, pursuant to Trial Rule 59, the United States Constitution (particularly the 5th and 14 amendments) and the laws for the United States (particularly 15 USC 1692 known as the Fair Debt Collection Practices Act), and designates to the Fulton Superior Trial Court the following errors that would void the Superior Court's Order as a matter of law.

1. The Plaintiff, Norlarco Credit Union, failed to exhaust its administrative remedies before commencing litigation

DEFENDANT'S MOTION TO CORRECT ERRORS IN OBJECTION TO COURT'S JUDGMENT ORDER OF APRIL 14, 2005

A. Motion to Dismiss for Lack of Subject matter jurisdiction pursuant to Ind. Trial Rule 12(B)(1).

1. On April 30, 2004, the Defendant filed his first motion to dismiss under Ind. Trial Rule 12(B)(1) claiming that the Plaintiff had failed to follow the laws of the Federal Trade Commission, (The Fair Debt Collection Practices Act). And, that Plaintiff had brought itself under federal administrative law by retaining a debt collector, Timothy O'Connor, to bring the present action against the Defendant.

2. Subsequently the trial court denied the motion. Defendant filed a Motion To Correct Errors that was also denied. Defendant appealed. His appeal was rejected without prejudice by both the Indiana Appellant Court and the Indiana Supreme Courts as being not a final judgment from which an appeal could be taken.

3. On 2/23/05 the Plaintiff filed its Motion For Summary Judgment. On 3/23/05 the Defendant filed his Verified Motion in Objection to Plaintiff's Motion for Summary Judgment along with an affidavit alleging abusive debt collection tactics by the attorney for Plaintiff, Timothy O'Connor.

4. On April 4, 2005, a hearing was held on the merits of both parties claims and summary judgment was granted to the Plaintiff.

4. On April 4, 2005, a hearing was held on the merits of both parties claims and summary judgment was granted to the Plaintiff.

Question presented:

Whether the failure of Plaintiff to exhaust its administrative remedies under 15 USC 1692 is grounds for dismissal under Ind. Trial Rule 12(B)(1)? Did the Fulton Superior Court lack subject matter jurisdiction?

Standard of Review:

If Defendant shows that Plaintiff acted under a federal administrative agency or in conjunction with a federal agency such as the Federal Trade Commission and did not comply with the statutory requirements of that agency, then the Plaintiff brought his action prematurely and the trial court does not have subject matter jurisdiction. Reiter v. Cooper, 507 U.S. 259, (1993).

ARGUMENT

Defendant contends that this action should be dismissed because the Plaintiff, Norlarco Credit Union, has failed to exhaust its administrative remedies. Pursuant to the exhaustion doctrine, a party ordinarily is required to pursue all available administrative remedies before obtaining judicial review on the merits of a claim. McKart v. United States, 395 U.S. 185, 193, 89 S.Ct. 1657, 1662, 23 L.E. 2d. 194 (1969).

Both before and after the commencement of litigation by Plaintiff, the Defendant timely noticed Plaintiff that it had a statutory duty under the Fair Debt Collection Practices Act (15 USC 1692) to give requested verification and to cease collection efforts until Plaintiff had complied with its own statutory duties.

Plaintiff was aware of its duties and failed to remedy that failure. The Plaintiff has refused to deny that its attorney, Timothy O'Connor is a debt collector whose principal business is the collection of debts, and that he

collects debts regularly.

It was necessary for the Plaintiff to affirmatively deny that it was under the Fair Debt Collection Practices Act in order to prevail against Defendant's Motion to Dismiss under Ind. Trial Rule 12(B)(1); dismissal for lack of subject matter jurisdiction. Plaintiff's failure to deny affirmatively that it was debt collector means that the trial court has to take all of Defendant's allegations of fact as true. Plaintiff has conceded to Defendant's allegation of facts. Adickes v. S. H. Kress, 398 U.S. 144, 90 S. Ct. 1508, 1600, (1970).

Plaintiff has failed to meet the burden of negating Defendant's allegations that it was at all times acting under 15 USC 1692 *inter alia* without following its statutory duties.

Where relief is available from an administrative agency, the plaintiff is ordinarily required to pursue that avenue of redress before proceeding to the courts; and until that recourse is exhausted, suit is premature and must be dismissed. Reiter v. Cooper, 507 U.S. 259, 113 S.Ct. 1213, 1220, (1993); Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41, 50-51, 58 S.Ct. 459, 463, 464, (1938).

WHEREFORE Defendant respectfully moves the Fulton Superior Trial Court to vacate its order for Summary Judgment and to dismiss all claims against the Defendant, Michael O. Rhines as set forth in the above captioned action.

II. Motion To Dismiss For Failure to Provide Due Process For Defendant's Protected Property Interest

A. *Motion to Dismiss Plaintiff's Action For Failure to Order a Pre-deprivation Hearing At A Meaningful Time and In A Meaningful Manner.*

1. On 7/26/04 the Defendant pointed the trial court's failure to provide a pre-

deprivation hearing and requested that the trial court provide an opportunity for a hearing.

2. On 9/24/04 the Defendant gave notice of default on request for hearing to the trial court.

3. As of 5/12/05 the Defendant still has not had an opportunity for a pre-

deprivation or post-deprivation hearing in accordance with his assertion of a protected

right.

Question presented:

Whether the federal statute15 USC 1692, *inter alia*, constitutes property within the meaning of the Due Process Clause?

Standard of Review:

If Defendant shows that 15 USC *inter alia* defines a private right with a private remedy, then he has a legitimate claim to protection under the Fifth Amendment made applicable to the states by the 14th amendment to the United States Constitution. The trial court cannot impair that right without a hearing in a meaningful time and manner. Failure to provide a pre-deprivation hearing for a protected right denies the trial court its subject matter jurisdiction and any judgment is void. Matter of Edwards, 962 F. 2d (7th Cir. 1992); 11 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2862,

at page 198-200 (1973). Fuentes v. Shevin, 407 U.S. 67, (1972).

ARGUMENT

Rhines' assertion that the trial court lacks subject matter jurisdiction for failure of the trial court to provide a hearing is controlled by whether or not a federal law creates a federal right. The fact that a federal statute has been violated and some person harmed does not automatically give rise to a private cause of action in favor of that person. Cannon v. University of Chicago, 441 U.S. 677, 688 (1979).

Whether 15 USC 1692 is an enforceable right mandating due process is a question of law, and thus, within the purview of the Court. In Blessing v. Freestone, 520 U.S. 329 (1997), the U.S. Supreme Court set out three factors as to whether or not a statute confers a right. These three are described as follows:

(1) Congress must have intended that the provision in question benefit the plaintiff.

(2) the plaintiff must demonstrate that the right assertedly protected by the statute is not so vague and amorphous that its enforcement would strain judicial competence, and

(3) the provision giving rise to the asserted right must be couched in mandatory, rather than pecatory terms.

The important operative word in the above described three factors is 'plaintiff'. In order for a federal law to rise to the level of an enforceable right it must provide a private remedy for the individual. If Norlarco Credit's omission in failing to provide verification, subjects itself to a civil cause of action in favor of the consumer, Rhines, then it is axiomatic that a private remedy exists.

Further, the question of the existence of a statutory

cause of action is, of course, one of statutory construction. The FDCPA (15 USC 1692) was enacted by Congress to regulate the abusive debt collection practices of debt collectors. When Congress wishes to provide a private damages remedy, it knows how to do so, and do so expressly. Touche Ross & Co. v. Redington, 442 U.S. 560, 572 (1978).

The federal statute 15 USC 1692 confers a right upon a class of persons called 'consumers' and gives them a private right of action against debt collectors who violate their consumer rights set out in 15 USC 1692. The terms of this statute are stated in

mandatory language...."1692g...a debt collector shall...; 1692g(b)...the debt collector shall cease...;1692k..any debt collector who fails to comply....is liable to any person...in an amount, but not exceeding $1,000.00." Both the text and structure of the statute indicate that Congress intended to create an individual right with a private remedy.

15 USC 1692g (b) provides that: **If the consumer notifies the debt collector in writing within the thirty-day period described in sub-section (a) of this section that the debt or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.**

The Plaintiff is required by law to apply the standards set forth in 15 USC 1692 *inter alia* before taking action against the Defendant. Defendant Rhines has a right to the application of those standards by the Plaintiff. And, he has a private remedy for the deprivation of those rights.

The key here is that there is a standard which must be applied by the Plaintiff before he may take action against Rhines. Since there is a standard set forth in 15 USC 1692 *inter alia* with a private remedy, Rhines has more than a unilateral expectation, he has a legitimate claim to a protected property right. As a practical matter, and as matter of law there is something to have a hearing about.

But, the Defendant has never had a hearing on the assertion that he has been denied a property interest by the Plaintiff, Plaintiff's attorney, and the Fulton Superior Court.

Defendant has requested an opportunity for a hearing on two separate occasions and both have been denied. These requests are on the court record. Defendant was further denied an opportunity for a meaningful hearing on 4/4/2005 by the refusal of the trial court judge to let Mr. Terpstra speak for Defendant and to help Defendant in cross-examination while giving personal testimony.

Because 15 USC 1692 rises to the level of an enforceable right that the defendant can assert, and rely upon, a pre-deprivation hearing is a mandatory requirement to the Fulton Superior trial court. Gonzaga University v. Doe, U.S. 273, at 282, 283, 284 (2002). Without a hearing the trial court loses its subject matter jurisdiction and its judgment becomes void. The standard formula, such as, a judgment is void "if the court that rendered it lacked jurisdiction of the subject matter,.....or if it acted in a manner inconsistent with due process of law," 11 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2862, at page 198-200 (1973); Pacular v. Hernly, 611 F.2d 179, 181 (7th Cir. 1979).

WHEREFORE, Defendant respectfully moves the Fulton Superior Trial Court to vacate its order for Summary Judgment and to dismiss all claims against the Defendant, Michael O. Rhines as set forth in the above captioned action.

's/Michael O. Rhines"

I, Michael O.Rhines verify under the penalties for perjury that the foregoing representations are true and correct to best of my knowledge and belief.

"s/ Michael O. Rhines"

Respectfully submitted,

"s/ Michael O. Rhines"
Pro Se

Date: May 12, 2005

APPENDIX M

ORDER DENYING DEFENDANT MICHAEL O. RHINES' MOTION TO DISMISS

COMES NOW Defendant Michael O. Rhines and files His Motion to *Dismiss Failure of Plaintiff to Exhaust Administrative Remedies* {sic] and Comes now the Plaintiff, Norlarco Credit Union, by counsel Timothy J. O'Connor, and files its *Response to Defendant's Motion to Dismiss*, and the Court being duly advised now FINDS as follows:

1. Defendant Michael O. Rhines Motion to Dismiss contends that this Court lacks subject matter jurisdiction over this case because the Plaintiff has failded to exhaust its administrative remedies.

2. This is a civil action brought to enforce a promissory note and security agreement. No government agency is involved. There is no administrative remedy available to the Plaintiff in this case, thus the Plaintiff did not fail to exhaust any such remedies.

3. Subject matter jurisdiction is conferred on this Court to hear the class of cases into which this case falls. Ind. Code § 33-5-10.9-3; Ind. Code § 33-4-4-3. The Court, therefore, has subject matter jurisdiction to hear this case.

THEREFORE, based upon the foregoing, Defendant Michael O. Rhines' Motion to Dismiss is DENIED.

SO ORDERED:

Date: June 25, 2004 "/ Wayne Steele"
Judge, Fulton Super Court